

**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
	)	
Revision of the Commission's Rules To	)	CC Docket 94-102
Ensure Compatibility With Enhanced 911	)	
(E911) Emergency Calling Systems	)	
	)	

To: Wireless Telecommunications Bureau

**REQUEST FOR A LIMITED WAIVER AND EXTENSION  
OF THE COMMISSION'S PHASE II E911 RULES**

MTPCS, LLC dba Chinook Wireless, ("Chinook"), by counsel and pursuant to 47 C.F.R. § 1.925, hereby requests a limited waiver and extension of the 47 C.F.R. § 20.18(g)(1)(v) Phase II enhanced 911 (E911) requirement that Tier III carriers achieve a location-capable handset penetration rate among its subscribers of at least 95% by December 31, 2005 ("95% subscriber penetration requirement").<sup>1</sup>

As set forth below, enforcement of the 95% subscriber penetration requirement to Chinook would not serve the underlying purpose of the rule. Further, it would ignore the unique facts and circumstances involving Chinook's request. As such, grant of the limited waiver and extension request would serve the public interest. In addition, as set forth in Section 106(a) of the Act, the Commission is to grant a waiver to Tier III carriers "if strict enforcement of the 95% subscriber penetration requirement would result in

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<sup>2</sup> Revisions of Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 940192, *Order to Stay* (rel. July 26, 2002).

consumers having decreased access to emergency services.”<sup>2</sup> Here, that would be the case.

## **I. BACKGROUND**

Chinook provides digital wireless service throughout rural Montana. It holds several CMRS licenses that are subject to this request, and operates a CDMA network.<sup>3</sup> As described more fully below, Chinook has deployed a “handset-based” E911 solution throughout its CDMA network. However, Chinook is in the process of deploying a GSM network and will ultimately transition all its CDMA subscribers to its GSM network. It anticipates completion of the conversion to GSM by September, 2006. Chinook will be utilizing a network-based solution for its GSM network. Upon conversion to GSM, Chinook will be capable of delivering Phase II information to the PSAPs in its service area.

## **RELIEF SOUGHT**

Chinook is only requesting a waiver of the requirement that Tier III carriers must achieve a penetration rate for location-capable handsets among its subscribers of at least 95% by December 31, 2005 until the time it transitions its CDMA customers to its GSM network, which it anticipates occurring by no later than September 30, 2006.

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<sup>2</sup> In December 2004, Congress enacted the Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004 (*ENHANCE 911 Act*). The *ENHANCE 911 Act* directed the Commission to grant qualified Tier III carriers’ requests for relief of the December 31, 2005 ninety-five percent penetration deadline for location-capable handsets, as set forth in Section 20.18(g)(1)(v) of the Commission’s Rules, if “strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services.”

<sup>3</sup> MTPCS, LLC holds the following personal communication service (PCS) licenses: KNLF770, KNLF935, KNLG957, KNLG960,, KNLG961, KNLG965, KNLH394, WPOI209 and WPOI210.

## II. E911 PHASE II COMPLIANCE TO DATE

Chinook commenced selling and activating location-capable handsets in the 3<sup>rd</sup> quarter of 2004 and only sells location-capable handsets, as required by the Commission's rules. With respect to the 95% subscriber penetration requirement here at issue, as of the date of this filing, approximately 80% of Chinook's subscribers are already using location-capable handsets. Thus, Chinook has made substantial strides toward increasing the percentage of location-capable handsets among its subscribers since the third quarter of 2004.

## IV. Waiver Standard

A waiver is appropriate whenever special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>4</sup> The Commission has established standards to be used when acting upon requests for a waiver of E911 deadlines and obligations.<sup>5</sup> The Commission has held that it will grant waiver requests that are specific, focused, and limited in scope, with a clear path to full compliance.<sup>6</sup> Further, the Commission has stated that carriers should undertake concrete steps necessary to come as close as possible to full compliance and should document their efforts aimed at compliance in support of any waiver request.<sup>7</sup> As set forth below, Chinook meets the Commission's standards and that the circumstances underlying the

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<sup>5</sup> 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D. C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D. C. Cir. 1969)).

<sup>6</sup> *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442, 17457-58, paras. 43-44 (2000) (*E911 Fourth Memorandum Opinion and Order*).

<sup>7</sup> *E911 Fourth Memorandum Opinion and Order*, 15 FCC Rcd at 17458, para. 44.

<sup>8</sup> *Id.*

request, in sum, present a special case that justifies a limited E911 Phase II waiver and extension.

## **V. A WAIVER IS NECESSARY TO SERVE THE PUBLIC INTEREST**

### **A. Public Safety Answering Point (PSAP) Requests**

To date, Chinook has received only one (1) validated PSAP request (City of Great Falls/Cascade County) for Phase II service. Chinook has fulfilled Phase II compliance and is operational for the city of Great Falls and Cascade County. Chinook also has pending requests for the Gallatin and Flathead county PSAPs and fully expects to be capable of delivering Phase II information to them within the required timeframe. In addition, the Chief of Police of the City of Great Falls has been very pleased with the proactive approach that Chinook has continued to show in making sure E-911 provides accurate ANI and ALI information.

### **B. Commitment and Path to Achieving Compliance**

As demonstrated by the substantial increase in location-capable handsets among its subscribers since the 3<sup>rd</sup> quarter of 2004, Chinook is, and has been, committed to moving toward the 95% subscriber penetration requirement (Chinook has been averaging over 50 upgrades per month to location-capable handsets.). Chinook has selected Intrado as its E911 services and ALI database provider. It has also ensured that all new handsets sold and activated are location-capable. Chinook has undertaken several types of promotions to encourage its existing subscribers to upgrade to location-capable handsets. It has continuously informed customers of the capabilities of GPS enabled phones, and has used a trade-in program as incentive for customers to upgrade. It also

has offered free handsets (with a contract) to subscribers in order to transition more of its subscribers to location-capable handsets. Until it converts its CDMA subscribers to GSM, Chinook will continue its efforts in upgrading subscribers to location-capable handsets.

C. Unique and Unusual Circumstances Cause Rigid Enforcement of Section 20.18(g)(1)(v) To Be Contrary To The Public Interest

The fact that Chinook is transitioning to a GSM system whereby it will employ a network-based solution to meet its E911 requirements makes its situation unique and unusual. It has faced considerable difficulty in converting its remaining CDMA customers to location-capable handsets. The root of this problem is, in considerable part, the high level of service provided by Chinook. Chinook's service area is predominately rural in which existing handsets provide subscribers with exceptional coverage. Specifically, a number of Chinook's customers continue to use older models that are larger and heavier and which provide for superior coverage in rural areas, which simply cannot be duplicated by E911 compliant digital handsets on the market today. Chinook equipment churn rate is about eighteen (18) months and its subscribers do not want to upgrade their existing handsets unless they absolutely have to. This is the case even when offered substantial incentives/rebates to upgrade their existing handset. Another obstacle preventing Chinook from reaching the 95% subscriber penetration requirement is the fact that Chinook is converting to GSM which will require its subscribers to obtain GSM handsets. Chinook has, and will continue to, offer incentive programs to entice handset upgrades. However, existing customers will be reluctant to upgrade their


existing handsets knowing that they will only be using the handset for about ten (10) months.

D. Strict Enforcement of the 95% Subscriber Penetration Rule Would Result in Consumers Having Decreased Access to Emergency Services

Strict enforcement of the 95% subscriber penetration requirement would most likely force Chinook to expend unnecessary resources in order to merely satisfy the Commission's rules. As mentioned previously, Chinook's focus is on upgrading to a GSM network that would ultimately provide for better and more expansive wireless service instead of having to expend additional resources on upgrading its handsets; specifically those subscribers that are presently receiving exceptional service with non-compliant handsets. If forced to strictly comply with the 95% subscriber penetration rule, its transition to GSM may be delayed. The end result will be a system whereby consumers have "decreased access to emergency services"; especially in rural and remote areas of Chinook's service area.

**VI. Conclusion**

Based on the foregoing reasons, grant of a limited waiver of the Commission's Phase II E911 rules will serve the public interest.

<p>Lukas, Nace, Gutierrez &amp; Sachs, Chartered 1650 Tysons Boulevard, Suite 1500 McLean, VA 22102 703-584-8678</p> <p>November 29, 2005</p>	<p>Respectfully submitted,</p> <p>MTPCS, LLC DBA CHINOOK WIRELESS</p>  <p>David A. LaFuria Todd Slamowitz</p> <p><i>Its Attorneys</i></p>
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**DECLARATION OF ERNIE PETERSON**

I, Ernie Peterson, declare under penalty of perjury that the foregoing is true and correct.

1. I am the VP and General Manager of MTPCS, LLC, dba Chinook Wireless.
2. I am familiar with the facts contained in the foregoing "Request for Limited Waiver and Extension of the Commission's Phase II E911 Rules", and I verify that those facts are true and correct to the best of my knowledge and belief, except that I do not and need not attest to those facts which are subject to official notice by the Commission.

  
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Ernie Peterson